

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	Complaint No. R8-2007-0090
)	for
Steve Reich, Owner)	Administrative Civil Liability
Downtown Auto Wrk'n)	
519 E. Mill Street)	
<u>San Bernardino, CA 92408</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), must impose liability under Section 13399.33 of the California Water Code, and may impose additional liability under Section 13385 of the California Water Code.
2. A hearing concerning this Complaint will be held within ninety days of the date of issuance of this Complaint. The hearing in this matter is scheduled for the Board's regular meeting on February 29, 2008 at the City Council Chambers, 25541 Barton Road, Loma Linda. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Downtown Auto Wrk'n (Downtown) is located at 519 E. Mill St., San Bernardino, and is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's WDID Number is 836I004480. The General Permit requires Downtown to submit an annual report by July 1 of each year.
5. The 2006-2007 annual report, which was due on July 2, 2007 (July 1, 2007 was a Sunday), was not received from Downtown. A Notice of Noncompliance was issued to Downtown on July 7, 2007. A second Notice of Noncompliance was issued on September 10, 2007. Both Notices were sent by certified mail and the return receipts indicate that they were received by the facility. The Notices of Noncompliance requested submittal of the completed annual report to the Board

office within 30 days, with a statement explaining why the annual report was not submitted by the July 1 deadline, and the measures that will be taken to ensure that future annual reports are submitted on time. The September 10, 2007 Notice of Noncompliance also noted the mandatory penalty for failure to submit the annual report.

6. On September 6, 2007, Board staff contacted Mr. Reich by telephone and reminded him to submit the annual report. On October 4, 2007, Board staff again telephoned Mr. Reich to remind him to submit the annual report. Mr. Reich indicated that he submitted documents to prove that the facility was no longer an auto wrecking yard. Board staff has not received any documentation from Downtown to indicate that it has changed its operations and the facility has not submitted a Notice of Termination to terminate coverage under the General Permit. Mr. Reich stated that now the facility just sells used auto parts. However, Mr. Reich admitted that the used auto parts are removed from vehicles within his facility. Board staff again reminded Mr. Reich that the facility is still regulated under the General Permit and the Permit requires him to submit the annual report. Board staff has neither received the annual report nor any information to indicate that permit coverage is no longer needed for this facility. In fact, from what Mr. Reich indicated, the facility is still required to be covered under the General Permit. As of the date of this complaint, the annual report has not been received.
7. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
7. Based on non-submittal of the 2006-07 annual report, the facility is alleged to have violated the General Permit for 172 days (from July 2, 2007 to December 21, 2007). The total maximum liability for this violation is \$1,720,000.
8. Section 13399.33(c) of the California Water Code provides that the Regional Board shall impose a minimum penalty of \$1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code.
9. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. These factors are evaluated in the table on the following page.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	The facility is fully aware of the General Permit requirement to submit the annual report and received two written notifications to submit the annual report and the facility was reminded over the phone that the annual reports were overdue.
B. Culpability	The facility obtained coverage under the General Permit on April 6, 1992. As indicated above, the facility is fully aware of its obligations under the General Permit including the annual reporting requirement. Downtown violated the terms of the General Permit by failing to submit the annual report.
C. Economic Benefit or Savings	<p>Staff estimates that Downtown saved approximately \$1,000 during the 2006-2007 reporting year by not collecting and analyzing storm water samples. Its savings from not submitting the annual report itself is negligible.</p> <p>Further, the facility has not paid its permit fees for a number of years. The following invoices have not been paid: 0631270 (\$830), 0432025 (\$830), 0321965 (\$830), and 0231289 (\$700). Total unpaid invoices=\$3,190.</p>

D. Prior History of Violations	<p>Downtown has a long history of late submittal of reports and submittal of incomplete and/or inaccurate reports. The facility obtained coverage under the General Permit on April 6, 1992. Except for the timely submittal of the 1997-98 and 1998-99 annual reports, the facility has been chronically late in submitting its annual reports. Board staff issued Notices of Non-Compliance for non-submittal of annual reports for 1992-93, 1995-96, 1996-97, 1999-2000, 2000-01, and 2001-02, 2002-03, 2003-04. As described above, ACLs were issued for the 2001-02 and 2003-04 reporting years. In 1998, an ACL was issued for non-submittal of the 1996-97 annual report. However, it was withdrawn based on the discharger's claim that the annual report was mailed to the wrong address.</p> <p>On April 4, 2003, the Regional Board affirmed Administrative Civil Liability (ACL) Complaint No. R8-2003-0008 issued to Downtown for failure to submit the 2001-2002 annual report and for its failure to conduct the required inspections and monitoring program. Downtown has not paid the \$2,500 penalty that was assessed.</p> <p>On April 15, 2005, the Regional Board affirmed ACL no. R8-2005-0028 issued to Downtown for its failure to submit the 2003-04 annual report. Downtown has not paid this assessment of \$5,000.</p> <p>The unpaid assessments have been entered as judgments against the facility by Superior Court of California, County of San Bernardino. The Board has recorded these judgments as liens against the facility, and the Attorney General's Office is proceeding with the collection of these judgments.</p>
E. Staff Costs	<p>Regional Board staff spent approximately 15 hours investigating this incident (@\$115.00 per hour, the total cost for staff time is \$1,725).</p>
F. Ability to pay	<p>The discharger has not provided any information to indicate that it is unable to pay the proposed amount. However, it is a small business with limited resources and Mr. Reich has previously indicated that the business is unable to pay any assessment.</p>

10. After consideration of these factors, the Assistant Executive Officer proposes that civil liability of \$10,000 be imposed on Downtown for the violations cited above. This amount includes \$1,000 as mandatory penalty under Section 13399.33, \$3,190 in unpaid permit fees, and a penalty of \$5,810.

WAIVER OF HEARING

You may waive your right to a hearing. If you wish to waive your right to a hearing, please sign the attached waiver form and return it in the enclosed preprinted envelope, together with a check payable to the State Water Resources Control Board for \$10,000. The waiver form and the check should be mailed to this office in the enclosed preprinted envelope.

If you have any questions, please contact Muhammad Bashir at (951) 320-6396 or Michael Adackapara at (951) 782-3238.

12/21/07

Date

Kurt V. Berchtold

Kurt V. Berchtold

Assistant Executive Officer

In the matter of:)
)
Steve Reich, Owner)
Downtown Auto Wrk'n)
519 E. Mill Street)
San Bernardino, CA 92408)

Complaint No. R8-2007-0090
for
Administrative Civil Liability

WAIVER OF HEARING

I agree to waive my right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2007-0090. I have enclosed a check or money order, made payable to the State Water Resources Control Board, in the amount of \$10,000. I understand that I am giving up my right to be heard and to argue against allegations made by the Assistant Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date

Steve Reich, Owner
Downtown Auto Wrk'n